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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOC #:  
DATE FILED: 4/18/12

HFP CAPITAL MARKETS, LLC;  
GEOFFREY BYRUCH

Case No. 1.12-cv-02124-JPO

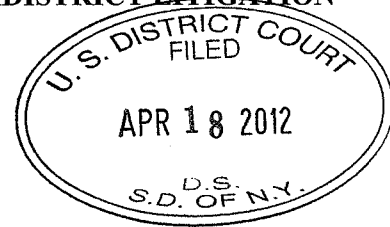
PLAINTIFFS

MOTION FOR STAY ALL  
PROCEEDINGS PENDING DECISION  
BY THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION

("JPML")

v.

PLASMA ARC TECHNOLOGIES, INC.;  
BARRINGTON SCHNEER; CHAD ALTIERI;  
JOHN LEUFRAJ; JAMES KOENIG;  
CANADIAN STEEL, INC.; CANADIAN  
STEEL FABRICATORS, LTD.; GEORGE  
MESA JR.,



DEFENDANTS.

**DEFENDANT, CHAD ALTIERI's MOTION FOR STAY PENDING DECISION  
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION ON  
CONSOLIDATION AND TRANSFER**

COMES NOW Defendant, Chad Altieri, and hereby moves the Court to stay all proceedings in this action pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") on HFP Capital Markets', et al motion to transfer and consolidate this and three other pending federal actions for coordinated pretrial proceedings.<sup>1</sup> This case is one of four actions pending in federal courts in California and Florida and New York that arise out of the defamatory comments, which injured two Plaintiffs, and the breach of Non-Circumvent/Non-Disclosure/Non-Compete Agreements in which HFP/Byruch/Movants stole science, science team, and created competition in the market place in violation of said agreements. Additionally, the case filed before this Honorable Court was conveniently brought three days before the

<sup>1</sup> The Plaintiff's MDL Motion and memorandum in support thereof had attached to it a Schedule of Actions Involved filed with the JPML. There have been some changes in the Schedule but it is attached as Exhibit B

Multidistrict litigation hearing which consists of gross fabrications, fictitious and ostentatious personal attacks, and outright lies that is clearly retaliatory, and was conveniently brought in order to create a pending case in the district, a fact necessary to effectuate transfer to the Southern District of New York. A supporting memorandum is attached, and an agreed order is submitted to the Court for its review.

The complaint was filed on Thursday March 22, 2012 and emailed on Monday, March 26, 2012. Counsel for HFP Capital Markets, et al. filed "notice of related action" (Please see attached exhibit A) with the multidistrict panel three days before the Thursday March 29, 2012 multidistrict litigation hearing. All of the other actions pending in the Southern District of Florida have been stayed and it would conserve judicial resources to similarly stay the newly brought New York proceedings until a decision is made as to consolidation and where the pre-trial proceedings will occur (Please see Orders Staying all Actions in the Southern District of Florida as Exhibit C). In furtherance, it would prevent duplicative discovery for the short period anticipated to receive a ruling.

#### **MEMORANDUM IN SUPPORT**

Defendant, Chad Altieri, moves this Court to stay this case pending a decision on a petition now pending before the Judicial Panel on Multidistrict Litigation ("JPML") in support of the establishment of a consolidated multidistrict proceeding for this and related litigation.

This case is one of four actions pending in federal courts in California and Florida and New York that arise out of the defamatory comments, which injured two Plaintiffs, and the breach of Non-circumvent/non-disclosure/non-compete agreements in which HFP/Byruch/Movants stole science, science team, and created competition in the market place in violation of said agreements. Additionally, the case brought before this Honorable Court was conveniently brought three days before the Multidistrict litigation hearing which consists of gross fabrications, false and pretentious personal attacks, and outright lies that is not only retaliatory, but also conveniently timed in order to create a pending case in the district, a fact necessary to effectuate transfer to the Southern District of New York.

Given the pendency of the MDL Motion, Chad Altieri requests that this Court stay all pretrial proceedings in the instant case until the JPML has ruled. Awaiting the JPML's decision would serve the principle aims of multidistrict litigation – preserving resources of the courts and litigants and avoiding inconsistent decisions on the same pretrial issues – by allowing a single transferee court to consider the common legal and factual pretrial issues together and issue consistent rulings on such issues. See In re Air Crash Near Kirksville, Mo., on Oct. 19, 2005, 383 F. Supp. 2d 1382, 1383 (J.P.M.L. 2005); Board of Trs. of the Teachers' Ret. Sys. v. WorldCom, Inc., 244 F. Supp. 2d 900, 905-06 (N.D. Ill. 2002). Numerous courts have previously recognized the propriety of staying proceedings while the JPML considers a motion to consolidate and transfer similar cases to a single transferee court. Additionally, opposing counsel and Plaintiffs/Defendants/Movants can hardly argue with this Motion considering they already filed a Notice of Related Action with the Judicial Panel on Multidistrict Litigation arguing that the newly filed pending action in New York should be considered for consolidation and transfer as the qualifying case to justify transfer to the Southern District of New York. The JPML is currently making its decision as to consolidation and transfer and it seems to serve the judicial resources to stay this whole proceeding until such decision is made.

## ARGUMENT

Federal courts possess inherent powers to stay proceedings before them. Landis v. North America Co., 299 U.S. 248, 254-255 (1936) (“the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, counsel, and for litigants”). Courts have routinely exercised this inherent authority to stay pretrial proceedings during the pendency of a motion before the JPML seeking coordinated pretrial proceedings. Indeed, “a majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1362 (C.D. Cal. 1997) (citing cases).

There is a good reason that this is the majority rule: an interim stay promotes judicial economy and avoids inconsistent results. See, e.g., Worldcom, Inc., 244 F. Supp. 2d at 905-06 (finding that “the interests of judicial economy and the threat of inconsistent rulings” favor a stay of all pretrial proceedings pending the JPML’s transfer decision); Johnson v. AMR Corp., 1996 WL 164415, at \*\*3-4 (N.D. Ill. Apr. 3, 1996) (concluding that “the best course is to postpone ruling on the present motions ... and allow the MDL panel to determine whether to make its conditional final orders”); see also In re Ivy, 901 F.2d 7, 9 (2d Cir. 1990) (holding that “[c]onsistency as well as economy is served” by staying consideration of a remand motion pending a decision by the MDL Panel); Tench v. Jackson National Life Insurance Co., 1999 WL 1044923, at \*3-4 (N.D. Ill. Nov. 12, 1999) (staying all pretrial proceedings pending the JPML’s transfer decision to “avoid duplicative efforts and preserve valuable judicial resources.”)<sup>2</sup>

In this case, both consistency and economy will be served by staying pretrial proceedings pending the JPML’s decision on the motion to transfer and consolidate the Actions. If numerous courts, including this Court, proceed with pretrial matters in advance of the JPML’s decision, then the efforts of the courts and litigants will be needlessly repeated many times over.

Moreover, such a “stay” will not unfairly prejudice the Plaintiffs. This is especially true considering it was the Plaintiffs that were the parties who initiated the JPML proceedings in the

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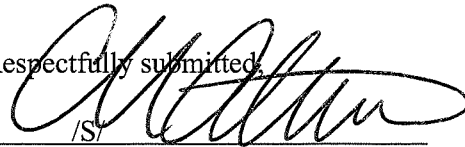
<sup>2</sup> See also Lame Bull v. Merck & Co., 2006 WL 194277, at \* 2 (E.D. Cal. Jan. 24, 2006) (“the interest of judicial economy favors staying this action pending its transfer to the MDL proceedings”); Toppins v. 3M Co., 2006 WL 12993, at \*\*1-2 (E.D. Mo. Jan. 3, 2006) (“Judicial economy weighs in favor of granting the request for a temporary stay pending a decision by the MDL panel.”); Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co., 2005 WL 3555926, at \*1 (E.D.N.Y. Dec. 23, 2005) (noting that, in staying motion to remand pending decision by the MDL Panel, “valuable judicial resources will be preserved”); Beal v. Merck & Co., Inc., 2005 WL 3279285, at \*1 (W.D. Tenn. Dec. 1, 2005) (staying motion to remand because “in the absence of a stay, the risk to [the defendant] of duplicative motions and discovery is significant”); Ramos-Martir v. Astra Merck, Inc., 2005 WL 3088372, at \*1 (D.P.R. Nov. 17, 2005) (granting stay of all proceedings pending MDL’s transfer decision because of the “undesirability of expending judicial resources familiarizing ourselves with the intricacies” of a case that is likely to be transferred); Foti v. Warner-Lambert Co., 2005 WL 2036920, at \*1 (E.D. La. Aug. 16, 2005) (staying all pretrial proceedings, including motion to remand, pending transfer decision by the MDL); Mirabile, M.D. v. Blue Cross & Blue Shield of Kansas City, Inc., 2005 WL 1592661, at \*2 (D. Kan. July 7, 2005) (finding that a stay of all proceedings pending a ruling by MDL “will serve the interests of justice, promote judicial economy, and prevent the parties from incurring unnecessary litigation costs in the meantime”); Med. Soc’y v. Connecticut Gen. Corp., 187 F. Supp. 2d 89, 91-92 (S.D.N.Y. 2001) (deferring consideration of motion to remand pending transfer decision by MDL Panel).

first place, which have stayed and stalled the other actions for several months now. By and through HFP's and Byruch's own actions by filing a case in New York and using it as a basis to justify consolidation and transfer to the Southern District of New York, it is apparent they feel stay and consolidation is proper (See Exhibit A). In fact, as Defendants in one of the other actions, Plaintiffs here asked for stay relief in an email to counsel for Plasma Arc Technologies pending the JPML proceedings. The Court in a separate action in the Southern District of Florida initiated an automatic stay and counsel for HFP/Byruch asked counsel for Plasma Arc Technologies if it opposed similar relief in the PAT v. HFP Capital Markets, et. al action, as they were going to ask for it either way. If the MDL Motion is granted, and this case is transferred, then the transferee court may consider any and all pretrial matters at that time. See, e.g., In re Ivy, 901 F.2d at 9. In the unlikely event the MDL Motion is denied, then the stay can be immediately lifted, and this Court can proceed with this matter as before. Under these circumstances, plaintiff faces no unfair prejudice from the requested stay. Moreover, the decision from the JPML will likely determine how the actions will move forward including Motions for Admission Pro Hac Vice which may or may not be necessary depending on the JPML proceedings.

## CONCLUSION

For the foregoing reasons, Defendant Chad Altieri requests that its motion to stay be granted, and that the Court stay all pretrial proceedings pending the JPML's decision on the MDL Motion. In the alternative, Chad Altieri requests a 35-day extension of time to answer or otherwise plead in response to the complaint.

Respectfully submitted,



/s/  
*Chad Altieri*

201 S. Biscayne Blvd.  
28<sup>th</sup> Floor  
Miami, FL 33131  
(305) 562-4981 tel.  
(305) 865-1268 fax  
FL Bar 49687

Dated this 12<sup>th</sup> day of April, 2012

EXHIBIT A

BEFORE THE UNITED STATES  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re Plasma Arc Technologies, Inc. Due  
Diligence Litigation

MDL No. 2336

**NOTICE OF RELATED ACTION**

PLEASE TAKE NOTICE that *HFP Capital Markets et anno. v. Plasma Arc Technologies, Inc., et al.*, No. 12-cv-2124, was filed in the United States District Court for the Southern District of New York on March 22, 2012. A Schedule of Actions is attached hereto as Exhibit A. A copy of the docket sheet and complaint are attached hereto as Exhibit B.

Dated: March 22, 2012  
New York, New York

By: s/ Samuel J. Lieberman

Samuel J. Lieberman  
Douglas R. Hirsch  
SADIS & GOLDBERG LLP  
551 Fifth Avenue, 21<sup>st</sup> Floor  
New York, NY 10176  
Tel: (212) 573-8164  
Fax: (212) 573-8149

*Attorneys for Movants HFP Capital Markets, LLC  
and Geoffrey Byruch*

**EXHIBIT B**



**BEFORE THE  
UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In re Plasma Arc Technologies, Inc. Due Diligence Litigation, MDL-\_\_\_\_\_**

**Schedule of Actions<sup>1</sup>**

<b>Plaintiff(s)</b>	<b>Defendants</b>	<b>Court</b>	<b>Civ. Action No.</b>	<b>Judge</b>
James Koenig	Geoffrey Byruch, individually and as Manager-Member of HFP Capital Markets LLC	C.D.C.A. Eastern Div.	5:11-cv-01671	Hon. Margaret M. Morrow
John Leufray	Geoffrey Byruch	C.D.C.A. Eastern Div.	5:11-cv-01700	Hon. Margaret Morrow
Canadian Steel, Inc.	HFP Capital Markets, LLC; Geoffrey Byruch	S.D. Fla.	1:11-cv-23650	Hon. Cecilia M. Altonaga
Plasma Arc Technologies, Inc.	Geoffrey Byruch; HFP Capital Markets, LLC	S.D. Fla.	1:11-cv-24232	Hon. Robert N. Scola, Jr.
John Leufray	Geoffrey Byruch	C.D.C.A. Eastern Div.	5:11-CV-2053	Hon. Virginia A. Phillips

<sup>1</sup> The Docket Sheets and Complaints for these actions are referenced in the supporting brief as Exhibits A-E hereto.

EXHIBIT C

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-24232-Civ-SCOLA/BANDSTRA

PLASMA ARC TECHNOLOGIES, INC.

Plaintiff,

vs.

HFP CAPITAL MARKETS, LLC, and  
GEOFFREY BYRUCH, an individual,

Defendants.

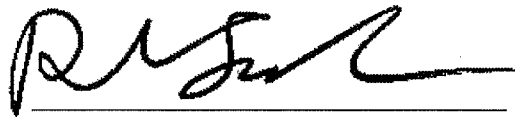
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**ORDER STAYING AND ADMINISTRATIVELY CLOSING CASE PENDING  
RULING BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

THIS MATTER is before the Court on Defendants' Notice of Filing the Motion to Transfer Actions to the Southern District of New York for Consolidated Proceedings (ECF No. 9). Having reviewed and considered the motion, the record, and the relevant legal authorities, it is **ORDERED and ADJUDGED** as follows:

1. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.
2. Within **fourteen days** of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendants shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.
3. The Clerk shall administratively **CLOSE** this case. All pending motions, if any, are **DENIED AS MOOT**.

**DONE and ORDERED** in chambers, at Miami, Florida, on January 4, 2012.

  
\_\_\_\_\_  
**ROBERT N. SCOLA, JR.**  
**UNITED STATES DISTRICT JUDGE**

Copies to:  
Designated U.S. Magistrate Judge  
Counsel of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 11-23650-CIV-ALTONAGA/Simonton

CANADIAN STEEL, INC.,

Plaintiff,

vs.

HFP CAPITAL MARKETS,  
LLC, *et al.*,

Defendants.

ORDER ADMINISTRATIVELY CLOSING CASE

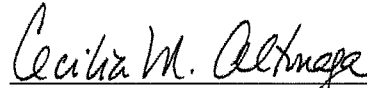
**THIS CAUSE** came before the Court upon Defendants' Notice of Filing ("Notice") [ECF No. 26], filed on January 3, 2012. In the Notice, Defendants advise the Court they have filed a Motion to Transfer Actions to the Southern District of New York for Consolidated Proceedings before the Judicial Panel on Multidistrict Litigation, on December 30, 2011. The Court has carefully considered the Notice, and being fully advised, it is

**ORDERED AND ADJUDGED** that

1. This case is **STAYED** pending a transfer decision by the Judicial Panel on Multidistrict Litigation.
  2. Furthermore, the case shall be **ADMINISTRATIVELY CLOSED**, for statistical purposes only, without prejudice to the substantive rights of any of the parties.
- Any party may move to reopen this case at the appropriate time.

Case No. 11-23650-CIV-ALTONAGA/Simonton

**DONE AND ORDERED** in Chambers at Miami, Florida, this 4th day of January, 2012.

Handwritten signature of Cecilia M. Altonaga in cursive script.

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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HFP CAPITAL MARKETS, LLC;  
GEOFFREY BYRUCH

Case No. 1:12-cv-02124-JPO

PLAINTIFFS

PROOF OF SERVICE FOR MOTION FOR  
STAY ALL PROCEEDINGS PENDING  
DECISION BY THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION ("JPML")

v.

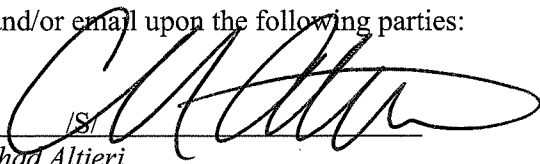
PLASMA ARC TECHNOLOGIES, INC.;  
BARRINGTON SCHNEER; CHAD ALTIERI;  
JOHN LEUFRAJ; JAMES KOENIG;  
CANADIAN STEEL, INC.; CANADIAN  
STEEL FABRICATORS, LTD.; GEORGE  
MESA JR.,

DEFENDANTS.

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**PROOF OF SERVICE**

I hereby certify that on April 12, 2012, a copy of the foregoing Motion for Stay and this  
Certificate of Service was served by First Class Mail/and/or email upon the following parties:

  
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(305) 865-1268 fax  
Dated this \_\_\_\_<sup>th</sup> day of April, 2012

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HFP CAPITAL MARKETS, LLC;  
GEOFFREY BYRUCH

Case No. 1.12-cv-02124-JPO

PLAINTIFFS

ORDER ON MOTION FOR STAY ALL  
PROCEEDINGS PENDING DECISION  
BY THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION ("JPML")

v.

PLASMA ARC TECHNOLOGIES, INC.;  
BARRINGTON SCHNEER; CHAD ALTIERI;  
JOHN LEUFRAJ; JAMES KOENIG;  
CANADIAN STEEL, INC.; CANADIAN  
STEEL FABRICATORS, LTD.; GEORGE  
MESA JR.,

DEFENDANTS.

---

**ORDER GRANTING DEFENDANT CHAD ALTIERI's MOTION FOR STAY ALL  
PROCEEDINGS PENDING DECISION BY THE JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION ("JPML")**

THIS CAUSE, having come Before This Honorable Court Upon Defendant, Chad Altieri's Motion For Stay All Proceedings Pending Decision By The Judicial Panel On Multidistrict Litigation ("JPML"), and the Court having reviewed the Motion, hearing argument from undersigned, and being otherwise duly advised in the premises,

**ORDERS, ADJUDGES, and DECREES that**

1. This case shall be **STAYED** pending a determination by the Judicial Panel on Multidistrict Litigation.



2. Within fourteen days of the Judicial Panel on Multidistrict Litigation releasing its decision, Defendants shall file a notice with this Court informing the Court as to the Panel's decision. The Court will reopen and recommence proceedings if the Panel determines that the actions are inappropriate for coordinated treatment or that this case is inappropriate for transfer.

3. The Clerk shall administratively CLOSE this case. All pending motions, if any, are **DENIED AS MOOT**.

**DONE and ORDERED in chambers, at New York, NY, on April \_\_\_, 2012.**

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**HONORABLE JUDGE J. PAUL OETKEN**  
**UNITED STATES DISTRICT JUDGE**

**cc. All Counsels of Record**